



- (1) What, if any, is the nature and extent of claimant's injury and/or disability?
- (2) Whether the Administrative Law Judge erred in ordering claimant to pay certain court reporter expenses.
- (3) Whether the award computation found in K.S.A. 1993 Supp. 44-510e(a) is unconstitutional in treating high-wage earners differently than low-wage earners.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board has held on numerous occasions in the past with regard to the constitutionality of statutes that it will leave these matters to courts of competent jurisdiction. Until such time as the Appeals Board is advised that K.S.A. 44-510e(a) is unconstitutional in its computation methods, the Appeals Board will continue to follow the language of the statute.

With regard to the nature and extent of claimant's injury and/or disability the Appeals Board, in reviewing the award, finds the language contained in the findings of fact and conclusions of law of the Administrative Law Judge to be appropriate and accurate in assessing the facts and the appropriate law in this case. The Appeals Board adopts same in toto, as if specifically set forth herein, in awarding claimant an 11% permanent partial general body disability based upon the medical evidence of Dr. Dale E. Darnell and Dr. Edward J. Prostic. Comments by claimant's attorney regarding Dr. Vito Carabetta are disregarded as Dr. Carabetta's medical evidence was not presented to the Administrative Law Judge and is not a part of this evidentiary file. See K.S.A. 44-555c.

The Appeals Board does take note of the commentary by the Administrative Law Judge regarding independent medical examinations. While the Appeals Board agrees that an independent medical examination doctor is usually more insulated from the influences of the parties and the potential bias of hired-gun favoritism, the Appeals Board does caution that to blindly adopt independent medical examinations over other medical opinions contained in the record would not, in all circumstances, be appropriate. While the medical reports of Dr. Darnell, the independent medical examiner in this case, do appear to be the more persuasive and controlling, the Appeals Board envisions circumstances where independent medical examinations may be performed with less exactness and accuracy. As such, the total adoption of independent medical examinations in all circumstances to the exclusion of all other medical opinions would not be appropriate. The trier of fact is to consider the whole record. See K.S.A. 44-501(a).

The Administrative Law Judge, in the body of the Award, assessed specific court reporter fees from the deposition of Dr. Prostic and the transcript of the regular hearing against the claimant. The total of these fees specifically assessed against the claimant were \$474.05. In the award section, the Administrative Law Judge awarded the costs in the amount of \$590.01 against the respondent. The total of all court reporter costs in this matter were \$590.01. The award appears to order both claimant and respondent to pay

the same transcript costs. The Appeals Board finds controlling the final award of the Administrative Law Judge and orders respondent to pay for the court reporter costs as specifically listed in the Award in the amount of \$590.01.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard dated December 5, 1995 shall be, and is hereby, affirmed in accordance with the above clarifications and claimant is entitled to an award against respondent and its insurance carrier for 18.57 weeks temporary total disability compensation carrier at the rate of \$313 per week totaling \$5,812.41, followed by 45.26 weeks permanent partial general body disability at the rate of \$313 per week totaling \$14,166.38 making a total award of \$19,978.79 for an 11% permanent partial general body disability.

As of April 17, 1996, there is due and owing to the claimant the total award of \$19,978.79 which is ordered paid in one lump sum less amounts previously paid.

Claimant is further awarded authorized medical expenses pursuant to the Administrative Law Judge's finding No. 3 contained in the Award.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent and its insurance carrier to be paid as follows:

Hostetler & Associates, Inc.		\$590.01
Deposition of Edward J. Prostic	7/14/95	
Transcript of Regular Hearing	7/25/95	
Deposition of Steve Walker	9/11/95	

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS  
Frederick J. Greenbaum, Kansas City, KS

**STEVE WALKER**

**4**

**DOCKET NO. 189,567**

Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director